In the Supreme Court of the United States

OCTOBER TERM, 1973

No.

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SAN FRANCISCO TYPOGRAPHICAL UNION No. 21, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in these cases insofar as it denies enforcement of the Board's orders.[1]

[1] The petition covers two cases which were consolidated for purposes of argument and decision in the court of appeals—*National Labor Relations Board* v. *San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO* (Nos. 71-2949, 71-2987). The charging party in both cases, California Newspapers, Inc., has filed a petition for certiorari to review the same judgment. *California Newspapers, Inc., d/b/a San Rafael Independent Journal* v. *San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO*, No. 73-1024.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3-6)[2] and its order denying the Board's petition for rehearing (Pet. App. 1-2) are reported at 486 F.2d 1347. The decisions and orders of the Board (Pet. App. 33-71, and 7-32) are reported at 193 NLRB 319 and 192 NLRB 523, respectively.

JURISDICTION

The judgment of the court of appeals was entered on May 18, 1973 (Pet. App. 3), and the Board's timely petition for rehearing was denied on November 14, 1973 (Pet. App. 1). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a union violates Section 8(b)(1)(B) of the National Labor Relations Act by disciplining members who are supervisors for crossing a picket line and performing work during an economic strike against the employer.

STATUTES INVOLVED

The relevant portions of the National Labor Relations Act (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are set forth in the petition in No. 73-1024, pp. 2-3. See note 1, *supra*.

STATEMENT

In these cases, the Board found that the Union violated Section 8(b)(1)(B) by disciplining four super-

[2] "Pet. App." refers to the appendix to the petition in No. 73-1024, which seeks review of the same judgment (n. 1, *supra*). A copy of the Judgment is attached as an Appendix to this petition.

visors[3] who were union members for working[4] behind the Union's picket line during a strike against the employer, San Rafael Independent Journal (Pet. App. 19-26, 54-66).[5] The Board ordered the Union to cease and desist from the unfair labor practices found and to rescind the fines or other discipline imposed on the supervisors (Pet. App. 26-28, 67-68). The court of appeals declined to enforce these portions of the Board's order, holding that, since the supervisors were disciplined for strike-breaking, "the Union did not punish them * * * for exercising any management duty" (Pet. App. 5).

REASONS FOR GRANTING THE WRIT

This case involves the same issue presented in *National Labor Relations Board* v. *International Brotherhood of Electrical Workers,* and *Florida Power & Light Co.* v. *International Brotherhood of Electrical Workers, et al.* (Nos. 73-795 and 73-556), in which this Court granted the petitions for certiorari on January

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[3] Gordon Dixon (mechanical superintendent and composing room foreman), Robert Dixon and Earl Dixon (assistant composing room foremen), and Ernest Fingerlos (chief machinist). The latter three were fined $10,000 each, and expelled from membership (Pet. App. 51); the same discipline was also ultimately imposed on Gordon Dixon (Pet. in No. 73-1024, p. 4, n. 2).

[4] During the strike, the supervisors performed some rank-and-file work and some supervisory work (Pet. App. 56).

[5] The Board also found that the Union further violated Section 8(b)(1)(B) of the Act by fining supervisor Gordon Dixon $418 for discharging employee Paul Austin because he took the afternoon off without permission (Pet. App. 14-15, 17-19, 26). The court of appeals sustained the Board's decision on this issue (Pet. App. 5), and that issue is not presented here.

21, 1974. In the *Electrical Workers* cases the Court of Appeals for the District of Columbia Circuit reached the same result as the court of appeals in this case, namely, it held that Section 8(b)(1)(B) of the National Labor Relations Act does not protect supervisor-members of a union from disciplinary action by the union for crossing a picket line to go to work during an economic strike against their employer. Two other court of appeals, however, have reached the contrary result.*

In the circumstances, we suggest that the Court hold the present petition for certiorari together with that of the charging party in No. 73-1024, until it has decided the *Electrical Workers* cases, and that it then dispose of the present petitions in accordance with its decision in those cases.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

February 1974.

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* *National Labor Relations Board* v. *Local 2150, Int'l Brotherhood of Elec. Workers*, 83 LRRM 2827 (C.A. 7), decided July 13, 1973, pending on petition for a writ of certiorari, No. 73-877; *National Labor Relations Board* v. *Toledo Locals Nos. 15-P and 271 of the Lithographers Int'l Union*, 437 F.2d 55 (C.A. 6).

APPENDIX

For the Ninth Circuit

National Labor Relations Board, Petitioner, vs. San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO Respondent.	No. 71-2987 Judgment (NLRB 20-CB-2285)

Upon Petition to Review a Decision of The National Labor Relations Board.

This Cause came on to be heard on the Transcript of the Record from The National Labor Relations Board and was duly submitted.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the ..... Decision of the said National Labor Relations Board in this Cause be, and hereby is enforced in part and remanded in part.

A True Copy
Attest Nov. 28, 1973

Emil E. Melfi, Jr.,
Chief Deputy and Acting Clerk
by Ray Hewitt
RAY HEWITT, DEPUTY
Filed and entered May 18, 1973

☆ U.S. Government Printing Office: 1974—531-391/159

FEB 19 1974

MICHAEL RODAK, JR., CLE

In the

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1199

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

SAN FRANCISCO TYPOGRAPHICAL UNION No. 21, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, et al.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Memorandum of [redacted] RESPONDENT CALIFORNIA NEWSPAPERS, INC. d/b/a SAN RAFAEL INDEPENDENT JOURNAL

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Memorandum of Charging Party

QUESTION PRESENTED

The question presented is as stated in the petition (p. 2).[1]

STATEMENT[2]

We urge, as we have in No. 73-1024, that the petition should be granted. However, we do not agree that this peti-

1. The question is the same as presented in the petition for a writ of certiorari filed by the Charging Party herein (California Newspapers, Inc., d/b/a San Rafael Independent Journal) in No. 73-1024 (p. 2 thereof).

2. The statement in the Board's petition is correct in so far as it goes. However, a full statement appears in No. 73-1024.

tion and the one in No. 73-1024 should be held together until this Court has decided the *Electrical Workers* cases,[3] and that it then dispose of these petitions in accordance with the decision in those cases. We urge the Court to consolidate this case and No. 73-1024 with the *Electrical Workers* cases for argument and decision. Our reason for so requesting will be readily apparent.

In the *Electrical Workers* cases, the supervisors performed rank and file work behind the picket lines.

As stated in No. 73-1024, differently than in the *Electrical Workers* cases, one of the supervisors in the instant case did not perform rank and file work behind the picket line. The other three supervisors performed some rank and file work, but mainly performed their supervisory duties (Pet. 73-1024, p. 6, n. 5).

Basically, we agree with the Board on the legal issue. However, should the Court reach a conclusion on the legal issue predicated upon the particular facts as to the functions the supervisors were performing behind the picket line, then the facts in the instant case being different in that respect than in the *Electrical Workers* cases, would warrant a different conclusion. We believe with the Board and urge that an employer has a right to utilize supervisory employees in any phase of its operations for the purpose of continuing to do business while under strike, without such employees being subject to discipline by a union to which they belong. Assuming, *arguendo*, that the Court should hold a union can impose discipline where such employee members perform rank and file work, we submit that it is nevertheless a violation of the Act to impose discipline

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3. *National Labor Relations Board v. Local 2150, International Brotherhood of Electrical Workers*, No. 73-795; *Florida Power & Light Co. v. International Brotherhood of Electrical Workers, et al*, No. 73-556.

where such employees perform their regular supervisory duties or substantially perform such duties.[4]

For that reason we request that the Court consolidate this case and No. 73-1024 with the *Electrical Workers* cases, *supra*.

Respectfully submitted,

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Dated: February 15, 1974.

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4. The Court of Appeals for the District of Columbia in *International Brotherhood of Elec. Wkrs. v. N.L.R.B.*, 487 F.2d 1143, 1156-57, 1174, in which this Court granted certiorari (73-795 and 73-556) acknowledged that section 8(b)(1)(B) prohibits union discipline of supervisors who cross the union picket line to perform supervisory duties.